

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROY BOWENS

Claimant

VS.

HALLMARK CARDS, INC.

Respondent,
Self-Insured

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Docket No. 267,195

ORDER

Respondent appealed the October 22, 2003 Order for Medical Treatment (Order) entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a February 20, 2001 accident. In the October 22, 2003 Order, Judge Avery granted claimant's request for medical treatment.

Respondent contends Judge Avery erred. Respondent argues claimant failed to prove that he sustained an accident that arose out of and in the course of his employment as the injury allegedly occurred due to a battery unrelated to his work. In the alternative, respondent argues claimant failed to prove that his present need for medical care stems from the February 20, 2001 accident. Accordingly, respondent requests the Board to deny claimant's request for workers compensation benefits.

Conversely, claimant contends the Order should be affirmed. Claimant argues his injuries occurred as the result of either an accident or an argument arising out of his work. Claimant also argues that the Board does not have jurisdiction at the preliminary hearing stage of the proceeding to review the issue of whether claimant's present need for medical treatment is related to the February 20, 2001 incident.

The only issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of his employment with respondent or, in the alternative, was he injured as the result of an argument or disagreement related to his work?

2. Does the Board have jurisdiction at the preliminary hearing stage of the proceeding to review the issue of whether claimant's present need for medical treatment is related to a compensable injury? If so, did claimant satisfy that burden?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes:

The October 22, 2003 Order for Medical Treatment should be reversed. The Board has jurisdiction at the preliminary hearing stage of a claim to review the issue of whether claimant's present need for medical treatment is related to an injury that is compensable under the Workers Compensation Act. And claimant has failed to prove his current injury for which he requests medical treatment was caused by a work-related event.

This is an appeal from a preliminary hearing order. Accordingly, the Board acknowledges that its jurisdiction over preliminary hearing issues is limited. The Board, however, does have jurisdiction to review those issues listed in K.S.A. 44-534a, which include whether the alleged injury arose out of and in the course of employment. A worker is only entitled to medical treatment under the Workers Compensation Act for injuries that are compensable under the Act. Consequently, in the context of this claim, the issue of whether the present need for medical treatment is related to a compensable injury is similar to the issue of whether the injury (for which claimant is seeking medical treatment) arose out of and in the course of employment.

Claimant's alleged injury occurred in February 2001. The record fails to establish that claimant's present need for medical treatment is related to that incident. Respondent presented medical records that indicate claimant suffered chronic neck symptoms before the February 2001 incident. Moreover, respondent presented a June 5, 2001 medical report from Dr. Chris D. Fevurly in which the doctor stated "[t]here is no likely causal relationship between the claimant's current complaints and the work event of February 20, 2001."¹ On the other hand, claimant failed to present any medical opinion that addressed the issue of whether claimant's current injury or need for medical treatment was related to the February 2001 incident. Because claimant has failed to satisfy his burden of proof, claimant's request for benefits should be denied.

¹ See P.H. Trans. (Oct. 20, 2003), Resp. Ex. A.

Based upon the above, it is unnecessary to address the issue of whether the February 2001 incident at work was an accident as defined by the Act² or an intentional act related to work.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Board reverses the October 22, 2003 Order for Medical Treatment.

IT IS SO ORDERED.

Dated this ____ day of December 2003.

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
John David Jurcyk, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-508(d).

³ K.S.A. 44-534a(a)(2).